

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NIKOLAI WEDEKIND, derivatively on
behalf of COSTCO WHOLESALE
CORPORATION.

Civil Action No. 2:18-cv-01777

Plaintiff,

COMPLAINT

V.

HAMILTON E. JAMES, SUSAN
DECKER, KENNETH D. DENMAN,
RICHARD A. GALANTI, W. CRAIG
JELINEK, RICHARD M. LIBENSON,
JOHN W. MEISENBACH, CHARLES T.
MUNGER, JEFFREY S. RAIKES, JOHN
W. STANTON, and MARY AGNES
WILDEROTTER.

COMPLAINT

Defendants.

and

COSTCO WHOLESALE CORPORATION.

Nominal Defendant.

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiff Nikolai Wedekind (“Plaintiff”), by and through his undersigned attorneys, hereby submits this Verified Shareholder Derivative Complaint (the “Complaint”) for

VERIFIED SHAREHOLDER DERIVATIVE
COMPLAINT - 1-

BADGLEY MULLINS TURNER PLLC

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1 the benefit of nominal defendant Costco Wholesale Corporation (“Costco” or the “Company”)
 2 against certain current and/or former members of its Board of Directors (the “Board”) and
 3 executive officers, seeking to remedy defendants’ breaches of fiduciary duties and unjust
 4 enrichment.

5 **NATURE OF THE ACTION**

6 2. According to its public filings, Costco engages in the operation of membership
 7 warehouses in the United States (U.S.) and Puerto Rico, Canada, United Kingdom (U.K.),
 8 Mexico, Japan, Korea, Australia, Spain, France, Iceland and through majority-owned subsidiaries
 9 in Taiwan. As of September 2, 2018, Costco operated 762 warehouses worldwide. Through the
 10 membership warehouses, Costco aims at offering low prices on a limited selection of national
 11 products in certain merchandise categories to produce high sales volumes and rapid inventory
 12 turnover.

13 3. On October 26, 2018, Costco filed a Form 10-K with the U.S. Securities and
 14 Exchange Commission (“SEC”) announcing the Company’s financial and operating results for
 15 the fiscal fourth quarter and fiscal year ended September 2, 2018 (“2018 10-K”), which was
 16 signed and certified under the Sarbanes-Oxley Act of 2002 by the Individual Defendants. Therein,
 17 Costco stated that ***“We identified a material weakness in internal control related to ineffective
 18 information technology general controls (ITGCs) in the areas of user access and program
 19 change-management over certain information technology (IT) systems that support the
 20 Company’s financial reporting processes.”***

21 4. On this news, the price of the Company’s common stock declined \$8.21 from a
 22 close on October 25, 2018 at \$226.40 per share of Costco common stock, to a close on October
 23 26, 2018 at \$218.19 per share of Costco common stock.

24 5. Accordingly, the Company has been damaged.

25 **JURISDICTION AND VENUE**

26 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §

1 1332(a)(1) in that Plaintiffs and Defendants are citizens of different states and the matter in
 2 controversy exceeds \$75,000.00, exclusive of interests and costs. This Court has supplemental
 3 jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. §1337(a). This action
 4 is not a collusive one to confer jurisdiction on a court of the United States which it would not
 5 otherwise have.

6 7. Venue is proper in this district because a substantial portion of the transactions
 7 and wrongs complained of herein, including the defendants' primary participation in the wrongful
 8 acts detailed herein, occurred in this district. One or more of the defendants either resides in or
 9 maintains executive offices in this district, and defendants have received substantial
 10 compensation in this district by engaging in numerous activities and conducting business here,
 11 which had an effect in this district.

12 **THE PARTIES**

13 8. Plaintiff is a current shareholder of Costco and has continuously held Costco stock
 14 since 2010. Plaintiff is a citizen of Utah.

15 9. Nominal defendant is incorporated in Washington and maintains its principal
 16 offices located at 999 Lake Drive, Issaquah, WA 98027. Costco's common stock trades on the
 17 NasdaqGS under the ticker symbol "COST."

18 10. Defendant Hamilton E. James ("James") has served as a director of the Company
 19 since August 1988. James currently serves as the Chairman of the Board. Upon information and
 20 belief, James is a citizen of New York.

21 11. Defendant W. Craig Jelinek ("Jelinek") has served as the Company's Chief
 22 Executive Officer ("CEO"), President, and Director since February of 2010. Prior to being named
 23 to these positions, Jelinek held various senior management positions in Operations and
 24 Merchandizing since 1984, including the position of Executive Vice President and Chief
 25 Operations Officer since 2004. Upon information and belief, defendant Barton is a citizen of
 26 Washington.

1 12. Defendant Susan Decker (“Decker”) has served as a director of the Company since
2 October 2004. Decker serves on the Board’s Audit Committee. Upon information and belief,
3 Decker is a citizen of California.

4 13. Defendant Kenneth Denman (“Denman”) has served as a director of the Company
5 since March 2017. Denman serves on the Board’s Compensation Committee, along with its Audit
6 Committee. Upon information and belief, Denman is a citizen of Colorado.

7 14. Defendant Richard A. Galanti (“Galanti”) has served as Executive Vice President
8 and Chief Financial Officer (“CFO”) of the Company since October 1993, and a director of the
9 Company since January 1995. In addition, Galanti was Senior Vice President, Chief Financial
10 Officer and Treasurer of the Company from January 1985 to October 1993, having joined as Vice
11 President-Finance in March 1984. Upon information and belief, Galanti is a citizen of
12 Washington.

13 15. Defendant Richard Libenson (“Libenson”) has served as a director of the Company
14 since October 1993. Upon information and belief, Libenson is a citizen of California.

15 16. Defendant John W. Meisenbach (“Meisenbach”) has served as a director of the Company
16 since the Company’s inception. Upon information and belief, Meisenbach is a citizen
17 of Washington.

18 17. Defendant Charles T. Munger (“Munger”) has served as a director of the Company
19 since January 1997. Munger serves as the chairperson for the Board’s Audit Committee, and as
20 a member of the Compensation Committee. Munger is also the Board’s financial expert. Upon
21 information and belief, Munger is a citizen of Oregon.

22 18. Defendant Jeffrey S. Raikes (“Raikes”) has served as a director of the Company
23 since December 2008. Raikes serves as the chairperson for the Nominating and Governance
24 Committee. Upon information and belief, Raikes is a citizen of Washington.

25 19. Defendant John W. Stanton (“Stanton”) has served as a director of the Company
26 since 2015. Stanton serves as the chairperson for the Board’s Compensation Committee. Upon

1 information and belief, Stanton is a citizen of Washington.

2 20. Defendant Mary Agnes Wilderotter (“Wilderotter”) has served as a director of the
3 Company since 2015. Wilderotter serves on the Board’s Nominating and Governance Committee,
4 along with the Compensation Committee. Upon information and belief, Wilderotter is a citizen
5 of Nevada.

6 21. Collectively, defendants James, Decker, Denman, Galanti, Jelinek, Libenson,
7 Meisenbach, Munger, Raikes, Stanton, and Wilderotter shall be referred to herein as the
8 “Individual Defendants.”

9 22. Collectively, defendants Munger, Decker, and Denman shall be referred to herein
10 as the “Audit Committee Defendants.”

11 DEFENDANTS’ DUTIES

12 23. By reason of their positions as officers, directors, and/or fiduciaries of Costco and
13 because of their ability to control the business and corporate affairs of Costco, Defendants owed
14 Costco and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and
15 are required to use their utmost ability to control and manage Costco in a fair, just, honest, and
16 equitable manner. Defendants were and are required to act in furtherance of the best interests of
17 Costco and its shareholders so as to benefit all shareholders equally and not in furtherance of their
18 personal interest or benefit. Each director and officer of the Company owes to Costco and its
19 shareholders the fiduciary duty to exercise good faith and diligence in the administration of the
20 affairs of the Company and in the use and preservation of its property and assets, and the highest
21 obligations of fair dealing.

22 24. Defendants, because of their positions of control and authority as directors and/or
23 officers of Costco, were able to and did, directly and/or indirectly, exercise control over the
24 wrongful acts complained of herein. Because of their advisory, executive, managerial, and
25 directorial positions with Costco, each of the Defendants had knowledge of material non-public
26 information regarding the Company.

1 25. To discharge their duties, the officers and directors of Costco were required to
 2 exercise reasonable and prudent supervision over the management, policies, practices and
 3 controls of the Company. By virtue of such duties, the officers and directors of Costco were
 4 required to, among other things:

- 5 a. Exercise good faith to ensure that the affairs of the Company were conducted
 in an efficient, business-like manner so as to make it possible to provide the
 highest quality performance of their business;
- 6 b. Exercise good faith to ensure that the Company was operated in a diligent,
 honest and prudent manner and complied with all applicable federal and state
 laws, rules, regulations and requirements, and all contractual obligations,
 including acting only within the scope of its legal authority; and
- 7 c. When put on notice of problems with the Company's business practices and
 operations, exercise good faith in taking appropriate action to correct the
 misconduct and prevent its recurrence.

8 26. Pursuant to the Audit Committee's Charter, the members of the Audit Committee
 9 are required to assist the Board in oversight of:

10 Meet with management and the independent auditor to discuss the annual financial
 11 statements and the report of the independent auditor, and to discuss significant
 12 issues encountered in the course of the audit work, including: restrictions on the
 13 scope of activities; ***access to required information; the adequacy of internal***
 14 ***financial controls;*** the adequacy of the disclosure of off-balance sheet transactions,
 15 arrangements, obligations and relationships in reports filed with the SEC; and the
 16 appropriateness of the presentation of any non-GAAP financial measures included
 17 in any report filed with the SEC or in any public disclosure or release. Review and
 18 discuss with management and the independent auditor management's report on
 19 internal control over financial reporting and the independent auditor's audit
 20 concerning the Company's internal control over financial reporting and its
 21 attestation report prior to the filing of the Form 10-K.

SUBSTANTIVE ALLEGATIONS

A. Background of the Company

22 27. According to its public filings, Costco engages in the operation of membership
 23 warehouses in the United States (U.S.) and Puerto Rico, Canada, United Kingdom (U.K.),
 24 Mexico, Japan, Korea, Australia, Spain, France, Iceland and through majority-owned subsidiaries
 25 in Taiwan. As of September 2, 2018, Costco operated 762 warehouses worldwide. Through the
 26

1 membership warehouses, Costco aims at offering low prices on a limited selection of national
2 products in certain merchandise categories to produce high sales volumes and rapid inventory
3 turnover.

4 28. On October 18, 2017, Costco filed a Form 10-K with the SEC announcing the
5 Company's financial and operating results for the fiscal fourth quarter and fiscal year ended
6 September 3, 2017 ("2017 10-K"), which was signed and certified under the Sarbanes-Oxley Act
7 of 2002 by the Individual Defendants. Therein, Costco stated in pertinent part:

8 Item 1A—Risk Factors (Continued)

9 * * *

10 We rely extensively on information technology to process transactions, compile
11 results, and manage our businesses. Failure or disruption of our primary and back-
12 up systems could adversely affect our businesses. A failure to adequately update
13 our existing systems and implement new systems could harm our businesses and
14 adversely affect our results of operations.

15 Given the very high volume of transactions we process each year it is important
16 that we maintain uninterrupted operation of our business-critical computer systems.
17 Our systems, including our back-up systems, are subject to damage or interruption
18 from power outages, computer and telecommunications failures, computer viruses,
internal or external security breaches, catastrophic events such as fires, earthquakes,
tornadoes and hurricanes, and errors by our employees. If our systems are damaged
or cease to function properly, we may have to make significant investments to fix
or replace them, and we may suffer interruptions in our operations in the interim.
Any material interruption in these systems could have a material adverse effect on
our business and results of operations.

19 * * *

20 *If we do not maintain the privacy and security of member related and other
21 business information, we could damage our reputation with members, incur
22 substantial additional costs, and become subject to litigation.*

23 We receive, retain, and transmit personal information about our members and
24 entrust that information to third-party business associates, including cloud service
25 providers that perform activities for us. Our warehouse and online businesses
26 depend upon the secure transmission of encrypted confidential information over
public networks, including information permitting cashless payments. A
compromise of our security systems or those of our business associates, that results

1 in our members' information being obtained by unauthorized persons, could
 2 adversely affect our reputation with our members and others, as well as our
 3 operations, results of operations, financial condition and liquidity, and could result
 4 in litigation against us or the imposition of penalties. In addition, a breach could
 5 require that we expend significant additional resources related to the security of
 6 information systems and could disrupt our operations.
 7

8 The use of data by our business and our business associates is regulated at the
 9 national and state or local level in all of our operating countries. Privacy and
 10 information-security laws and regulations change, and compliance with them may
 11 result in cost increases due to necessary systems changes and the development of
 12 new processes. If we or those with whom we share information fail to comply with
 13 these laws and regulations, our reputation could be damaged, possibly resulting in
 14 lost future business, and we could be subjected to additional legal risk as a result of
 15 noncompliance.
 16

17 *Our security measures may be undermined due to the actions of outside parties,
 18 employee error, internal or external malfeasance, or otherwise, and, as a result
 19 an unauthorized party may obtain access to our data systems and misappropriate
 20 business and personal information.* Because the techniques used to obtain
 21 unauthorized access, disable or degrade service, or sabotage systems change
 22 frequently and may not immediately produce signs of intrusion, we may be unable
 23 to anticipate these techniques, timely discover or counter them, or implement
 24 adequate preventative measures. Any such breach or unauthorized access could
 25 result in significant legal and financial exposure, damage to our reputation, and
 26 potentially have an adverse effect on our business.
 27

28 (Emphasis added)

29. Regarding disclosure controls and procedures, Costco stated in relevant part:

30 Item 9A—Controls and Procedures

31 **Disclosure Controls and Procedures**

32 As of the end of the period covered by this Annual Report on Form 10-K, we
 33 performed an evaluation under the supervision and with the participation of
 34 management, including our Chief Executive Officer and Chief Financial Officer,
 35 of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-
 36 15(e) under the Securities and Exchange Act of 1934 (the Exchange Act)). *Based
 37 upon that evaluation, our Chief Executive Officer and Chief Financial Officer*
 38

concluded that, as of the end of the period covered by this Annual Report, our disclosure controls and procedures are effective.

There has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) of the Exchange Act) during our fiscal quarter ended September 3, 2017, that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

30. On June 6, 2018 after the market close, Costco filed a Form 10-Q with the SEC announcing the Company's financial and operating results for the third fiscal quarter and nine months ended May 13, 2018 ("Q3 2018 10-Q"), which was signed and certified under the Sarbanes-Oxley Act of 2002 by the Individual Defendants. Therein, the Company stated in relevant part:

Item 4—Controls and Procedures (Continued)

Chief Financial Officer, of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934 (the Exchange Act)). ***Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this Quarterly Report, our disclosure controls and procedures are effective.***

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) of the Exchange Act) during our most recently completed fiscal quarter that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

* * *

Item 1A—Risk Factors

In addition to the other information set forth in the Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K, for the fiscal year ended September 3, 2017. *There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K.*

(Emphasis added).

31. These misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants failed to disclose that: (i) Costco lacked effective internal control over financial reporting; (ii) as a result of the foregoing, Defendants' statements about Costco's business, operations, and prospects were false and misleading, and/or lacked a reasonable basis.

B. The Truth Emerges

32. On October 4, 2018, Costco issued a press release, also attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's financial and operating results for the fourth fiscal quarter and fiscal year ended September 2, 2018 ("FY 2018 Press Release"). Therein, Costco stated in relevant part:

COSTCO WHOLESALE CORPORATION REPORTS FOURTH QUARTER AND FISCAL YEAR 2018 OPERATING RESULTS

ISSAQAH, Wash., October 4, 2018—Costco Wholesale Corporation (“Costco” or the “Company”) (Nasdaq: COST) today announced its operating results for the 16-week fourth quarter and the 52-week fiscal year ended September 2, 2018.

Net sales for the 16-week fourth quarter were \$43.4 billion, an increase of 5.0 percent from \$41.4 billion in the 17-week fourth quarter last year. Net sales for the 52-week fiscal year were \$138.4 billion, an increase of 9.7 percent from \$126.2 billion in the 53-week fiscal year of 2017.

* * *

While the Company is still completing its assessment of the effectiveness of its internal control over financial reporting as of September 2, 2018, in its upcoming fiscal 2018 Annual Report on Form 10-K, it expects to report a material weakness in internal control. The weakness relates to general information technology controls in the areas of user access and program change management over certain information technology systems that support the Company's financial reporting processes. The access issues relate to the extent of privileges afforded users authorized to access company systems. As of the date of this release, there have been no misstatements identified in the financial statements as a result of these deficiencies, and the Company expects to timely file its Form 10-K. Remediation

1 efforts have begun; the material weakness will not be considered remediated until
 2 the applicable controls operate for a sufficient period of time and management has
 3 concluded, through testing, that these controls are operating effectively. The
 Company expects that the remediation of this material weakness will be completed
 prior to the end of fiscal year 2019.

4 33. In an earnings call later that same day, when prompted by an analyst question
 5 defendant Galanti elaborated on the process of remediation efforts, emphasizing certain
 6 uncertainties. Therein, defendant Galanti stated in relevant part:

7 Well, keep in mind, first of all, that we feel comfortable, and we feel that our --
 8 ultimately, our auditors feel comfortable. We wouldn't have expressed the level of
 9 comfort we did in the press release about the time that there's no mistake [there's
 10 the timing that] we filed on time, including the K. The issues had to do with internal
 11 user access, so people within IT or contractors and when somebody who may have
 12 had access to something they should have and sometimes that they -- once they
 13 should have had that access relieved, it took a little too long to do so. So the controls
 14 weren't in place. We should have done a better job. *We went back as far as we
 could and looked back as far as we could in some systems for the entire fiscal
 year, which is what you want to do. In some of the newer systems, there was no
 look back ability for certain things. I can tell you with all the look backs that we
 have done and then our outside help has done has found no issues whatsoever in
 terms of misstatements or breaches. So that's what we can tell you. But we can't
 be more positive than that* until we release the 10-K. And as -- and so I don't want
 15 to belittle it. We should have -- it should have been fixed, but it was internal to us,
 16 not external. And we'll go from there.

17 34. On this news, the price of the Company's common stock declined \$12.86 from a
 18 close on October 4, 2018 at \$231.68 per share of Costco common stock, to a close on October 5,
 19 2018 at \$218.82 per share of Costco common stock.

20 35. On October 26, 2018, Costco filed a Form 10-K with the SEC announcing the
 21 Company's financial and operating results for the fiscal fourth quarter and fiscal year ended
 22 September 2, 2018 ("2018 10-K"), which was signed and certified under the Sarbanes-Oxley Act
 23 of 2002 by the Individual Defendants. Therein, Costco stated in pertinent part:

24 *We identified a material weakness in internal control related to ineffective
 25 information technology general controls (ITGCs) in the areas of user access and*

1 ***program change-management over certain information technology (IT) systems***
 2 ***that support the Company's financial reporting processes.*** Our business process
 3 controls (automated and manual) that are dependent on the affected ITGCs were
 4 also deemed ineffective because they could have been adversely impacted. We
 5 believe that these control deficiencies were a result of: IT control processes lacking
 6 sufficient documentation such that the successful operation of ITGCs was overly
 7 dependent upon knowledge and actions of certain individuals with IT expertise,
 8 which led to failures resulting from changes in IT personnel; insufficient training
 9 of IT personnel on the importance of ITGCs; and risk-assessment processes
 10 inadequate to identify and assess changes in IT environments that could impact
 11 internal control over financial reporting. The material weakness did not result in
 12 any identified misstatements to the financial statements, and there were no changes
 13 to previously released financial results. ***Based on this material weakness, the***
 14 ***Company's management concluded that at September 2, 2018, the Company's***
 15 ***internal control over financial reporting was not effective.***

16 36. On this news, the price of the Company's common stock declined \$8.21 from a
 17 close on October 25, 2018 at \$226.40 per share of Costco common stock, to a close on October
 18 26, 2018 at \$218.19 per share of Costco common stock.

19 **DERIVATIVE AND DEMAND ALLEGATIONS**

20 37. Plaintiff brings this action derivatively in the right and for the benefit of Costco to
 21 redress the breaches of fiduciary duty and other violations of law by Defendants.

22 38. Plaintiff will adequately and fairly represent the interests of Costco and its
 23 shareholders in enforcing and prosecuting its rights.

24 39. The Board currently consists of the following eleven (11) directors: defendants
 25 James, Decker, Denman, Galanti, Jelinek, Libenson, Meisenbach, Munger, Raikes, Stanton, and
 26 Wilderotter. Plaintiff has not made any demand on the present Board to institute this action
 because such a demand would be a futile, wasteful and useless act, for the following reasons:

- 27 a. The principal professional occupations of defendants Jelinek and Galanti are
 28 their employment with Costco as its CEO and CFO respectively, pursuant to
 29 which they have received and continues to receive substantial monetary
 30 compensation and other benefits;
- 31 b. According to the Company's December 15, 2017 Proxy Statement (the "2017
 32 Proxy") the Board has determined that defendants Galanti, Jelinek, Libenson,

1 and Meisenbach are not independent directors within the meaning of
2 NASDAQ rules because they have a relationship that would interfere with the
3 exercise of their independent judgment in carrying out the responsibilities of
4 a director; and

5 c. The Audit Committee Defendants (Munger, Decker, Denman) each face a
6 substantial likelihood of liability for their failure to take steps to ensure the
7 Company's regulatory compliance. The Audit Committee Charter specifically
8 charges the members of the Audit Committee with ensuring the Company's
9 compliance with legal and regulatory requirements, and the Audit Committee
10 Defendants violated their duties of loyalty and good faith by failing to take
11 adequate steps to ensure such compliance.

12

13 **COUNT I**
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY FOR
DISSEMINATING INACCURATE INFORMATION

14 40. Plaintiff incorporates by reference and realleges each and every allegation set forth
15 above, as though fully set forth herein.

16 41. As alleged in detail herein, each of the Defendants had a duty to ensure that Costco
17 disseminated accurate, truthful and complete information to its shareholders.

18 42. Defendants violated their fiduciary duties of loyalty and good faith by causing or
19 allowing the Company to disseminate to Costco shareholders materially misleading and
20 inaccurate information through, *inter alia*, SEC filings, press releases, conference calls, and other
21 public statements and disclosures as detailed herein. These actions could not have been a good
22 faith exercise of prudent business judgment.

23 43. As a direct and proximate result of Defendants' foregoing breaches of fiduciary
24 duties, the Company has suffered significant damages, as alleged herein.

25

26 **COUNT II**
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES
FOR FAILING TO MAINTAIN INTERNAL CONTROLS

27 44. Plaintiff incorporates by references all preceding and subsequent paragraphs as if
28 fully set forth herein.

29 45. As alleged herein, each of the Defendants (and particularly the Audit Committee
30 Defendants) had a fiduciary duty to, among other things, exercise good faith to ensure the
31 Company's compliance with legal and regulatory requirements, and, when put on notice of
32

1 problems with the Company's business practices and operations, exercise good faith in taking
2 appropriate action to correct the misconduct and prevent its recurrence.

3 46. As a direct and proximate result of the Defendants' foregoing breaches of
4 fiduciary duties, the Company has sustained damages.

5 **COUNT III**
6 **AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT**

7 47. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if
fully set forth herein.

8 48. By their wrongful acts and omissions, Defendants were unjustly enriched at the
9 expense of and to the detriment of Costco.

10 49. Plaintiff, as a shareholder and representative of Costco, seeks restitution from
11 Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits,
12 and other compensation obtained by Defendants, and each of them, as a result of their wrongful
13 conduct and fiduciary breaches.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment as follows:

16 A. Against all Defendants and in favor of the Company for the amount of damages
sustained by the Company as a result of Defendants' breaches of fiduciary duties;

17 B. Directing Costco to take all necessary actions to reform and improve its corporate
governance and internal procedures to comply with applicable laws and to protect the Company
18 and its shareholders from a repeat of the damaging events described herein, including, but not
19 limited to, putting forward for shareholder vote resolutions for amendments to the Company's
20 By-Laws or Articles of Incorporation and taking such other action as may be necessary to place
21 before shareholders for a vote a proposal to strengthen the Board's supervision of operations and
22 develop and implement procedures for greater shareholder input into the policies and guidelines
23 of the Board;

C. Awarding to Costco restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED this 11th day of December, 2018.

s/ Duncan C. Turner
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